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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/841,820

04/25/2001

Jochen Wurtz

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7590

09/11/2006

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/841,820

Applicant(s)

WURTZ ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 15-18,20-25 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 15-18,20-25,28,30-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicant is correct in that none of the cited references (JP 11315004; JP 10330202; JP 10182302; JP 10081603) suggest that the ALS inhibitor is dissolved.

Applicant's arguments, see paper, filed 5/5/06, with respect to the rejection(s) of claim(s) under 35 USC 102(b) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of rejection below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-18,20-25,28,30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pappas-Fader et al (USPN 5736486; 4/7/98) and JP 10-330202; 1998 on record. Pappas-Fader teaches a herbicidal mixture comprising anilofos with propanil or one or more compounds including chlorsulfuron (ALS inhibitor) sulfometuron-methyl (ALS inhibitor) and / or hexazinone. See abstract, column 1 line 36 – column 4 line 41. Pappas-Fader teaches that the mixture can be formulated as solution, emulsifiable concentrate, suspension, etc. See column 10 lines 24-44. If the

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mixture is formulated as a solution, the ALS inhibitor(s) would inherently be dissolved since solution means ingredients therein are totally miscible. Note that Pappas-Fader suggests the mixture comprising actives other than sulfonylureas such as anilofos and propanil as well as sulfonylurea actives such as chlorsulfuron, sulfometuron-methyl. Pappas-Fader teaches that surfactants such as dialkyl sulfosuccinate and organic solvents such as methanol, cyclohexanol, or decanol can be added to the mixture. See column 11 lines 9-29. Pappas-Fader teaches a method of applying the mixture to vegetation in order to control weed growth. See abstract, column 1 lines 39-55. Pappas-Fader does not a) exemplify a solution specifically comprising one or more sulfonylureas, actives other than sulfonylureas, dialkylsulfosuccinate, and organic solvents such as methanol and b) teach the instant dialkylsulfosuccinates. It would have been obvious to one having ordinary skill in the art to make a solution comprising one or more sulfonylureas, actives other than sulfonylureas, dialkylsulfosuccinate, and organic solvents such as methanol. One would have been motivated to do this in order to develop an invention that would have been effective in controlling weeds in plants. Additional motivation to make the invention comes from the fact that the reference suggests the mixture for controlling weed growth in plants. With respect to the dialkylsulfosuccinate, JP '202 teaches a herbicidal composition comprising dioctyl sulfosuccinate. See abstract, claims 1 and 6. It would have been obvious to one having ordinary skill in the art to use dioctyl sulfosuccinate in the instant invention. One would have been motivated to do this since both references have the same utility, i.e., both references teach the control of weeds in plants using herbicides. Since Pappas-Fader

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broadly teaches the use of dialkylsulfosuccinates, the employment of the sulfosuccinates in claim 16 would have been obvious. This is true because dialkylsulfosuccinates have a common core structure, which make them functional. This common core is present in all sulfosuccinates and is responsible for their function; therefore, it would have been obvious to employ the sulfosuccinates of claim 16. The amounts of dialkylsulfosuccinate and ALS inhibitor would have been determined through routine experimentation. It is very possible that the optimum amounts would have fallen within the instant % ranges since the instant ranges are so broad. One would have been motivated to determine the optimum amounts in order to make an invention that would have been effective in killing weeds without preventing healthy plant / crop growth.

Claim Objection

Claim 29 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the liquid formulation comprising sodium di-(2-ethylhexyl)sulfosuccinate) and iodosulfuron-methyl.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Alton Pryor', is written over the printed name.

Alton Pryor
Primary Examiner
AU 1616